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**UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF ARIZONA**

<b>United States of America,</b>	)	<b>Case No.: 2:24-cr-00355-SPL</b>
	)	
Plaintiff,	)	<b>DEFENDANT’S MOTION TO COMPEL</b>
	)	
vs.	)	
	)	
<b>Larry Edward Brown, Jr.,</b>	)	<b>Defendant Out Of Custody</b>
	)	
Defendant	)	
	)	

Defendant, through undersigned counsel, hereby moves this Court to enter an Order compelling the United States to produce to the defense call and SMS logs (toll records) of FBI SA Taylor Hannah for the dates of August 17, 2023 to August 31, 2023, inclusive, for the reasons set forth herein.

**I. Factual Introduction**

On November 19, 2024, defense counsel requested that the Government produce to the defense “a copy of call and SMS logs for SA

1 Hannah's government issued / work cell phone for the period of time of  
2 August 17, 2023 through August 31, 2023." (Exhibit 1). Recognizing the  
3 potential sensitivity of the requested records, defense counsel agreed to an  
4 "attorneys' eyes only" protective order whereby the records could only be  
5 viewed by defense counsel and no one else. *Id.*

6 Somewhat misconstruing the defense's request, on November 26,  
7 2024, the Government responded "After consulting with Agent Hannah, we  
8 can confirm that the requested text messages on her phone do not contain  
9 any *Jenks* [sic] / Section 3500 material." *Id.* After clarifying the request for  
10 production encompassed only logs, and not substantive content of SA  
11 Hannah's communication, defense counsel certified the good faith nature of  
12 the request, stating "[w]e avow to you that this request in made in furtherance  
13 of our pursuit of a defense that we are considering raising at trial." *Id.* The  
14 Government responded that it had no obligation under Rule 16, Federal Rules  
15 of Criminal Procedure, to produce the materials sought and that the defense's  
16 request "encompasses toll records relating to other (unrelated) criminal  
17 investigations and fugitive operations that contain sensitive law enforcement  
18 information." *Id.*

19 The defense then renewed its aforementioned avowal and agreement  
20 to a stringent protective order, but declined to provide the Government with its  
21 rationale for the request on grounds that defense counsel's strategy and  
22 mental impressions surrounding the request are protected by the work  
23 product privilege. *Id.*

24 The Government has maintained its refusal to produce the requested  
25 materials and this timely filed Motion followed.

26 II. Argument

1           The discovery obligations under Rule 16(a)(1)(E) cover only items in  
2 the Government's possession, custody or control. SA Hannah is an agent of  
3 the Government and is the lead investigator in this case. Therefore, she is an  
4 agent of the Government such that her (work) cell phone records are subject  
5 to examination or inspection by the defense. The Ninth Circuit has made  
6 clear that "'the scope of the government's obligation' turned on 'the extent to  
7 which the prosecutor has knowledge of and access to the [item].'" *United*  
8 *States v. Santiago*, 46 F.3d 885, 894 (9th Cir. 1995) (quoting *United States v.*  
9 *Bryan*, 868 F.2d 1032, 1036 (9th Cir. 1989)). Rule 16 does not require that  
10 the requested documents be admissible; rather, evidence is discoverable  
11 under Rule 16 "even if the evidence is not admissible so long as it is  
12 reasonably likely to lead to admissible evidence." *United States v. Price*, 566  
13 F.3d 900, 913 n. 14 (9th Cir. 2009).

14           "A defendant must make a threshold showing of materiality, which  
15 requires a presentation of facts which would tend to show that the  
16 Government is in possession of information helpful to the defense." *United*  
17 *States v. Santiago*, 46 F.3d 885, 894 (9th Cir. 1995). This showing requires a  
18 defendant to provide "specific facts, beyond allegations" to support a claim of  
19 materiality. *Id.* at 894-95. It "behooves the Government to interpret the  
20 disclosure requirement broadly and turn over whatever evidence it has  
21 pertaining to the case." *United States v. Hernandez-Meza*, 720 F.3d 760, 768  
22 (9th Cir. 2013). "Materiality is a low threshold; it is satisfied so long as the  
23 information [ ] would have helped [the defendant] prepare a defense." *Id.*

24           Defendant has twice avowed to the Government that the information  
25 sought is material, helpful, and "further[s] of our pursuit of a defense that we  
26 are considering raising at trial." The Government has done nothing to rebut or

1 refute this avowal. But so as to avoid doubt, Exhibit A hereto (filed *ex parte*  
2 and under seal) contains defense counsel's work product strategy and  
3 rationale supporting its request.

4 The Government's basis for its refusal to produce the requested  
5 information is unavailing. Notwithstanding its unilateral assertion that the  
6 records do not contain anything that is discoverable under *Jencks* or 18  
7 U.S.C. § 3500, the standard for materiality under Rule 16 is more expansive  
8 than that under *Brady/Giglio*. See *United States v. Muniz-Jaquez*, 718 F.3d  
9 1180, 1183 (9th Cir. 2013) ("Rule 16 is thus broader than *Brady*. Information  
10 that is not exculpatory or impeaching may still be relevant to developing a  
11 possible defense."). Moreover, a district court's Rule 16 inquiry is not a mere  
12 *fait accompli* simply because the Government says the requested information  
13 is not material. "[T]he district court should not merely defer to government  
14 assertions that discovery would be fruitless." *United States v. Budziak*, 697  
15 F.3d 1105, 1112-13 (9th Cir. 2012). "[C]riminal defendants should not have to  
16 rely solely on the government's word that further discovery is unnecessary."  
17 *Id.* at 1113.

### 18 III. Conclusion

19 Based on both defense counsel's avowal, as well as the contents of  
20 Exhibit A, the Court should make a finding that Defendant has made the  
21 requisite showing of materiality and grant the instant Motion such that the  
22 Government be ordered to produce to the defense toll records of any calls or  
23 SMS messages made/sent or received on her Government-issued work  
24 phone between the dates of August 17, 2023 and August 31, 2023, inclusive.

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Respectfully submitted this 2<sup>nd</sup> day of December, 2024.

/s/ Jason D. Lamm  
Jason D. Lamm

/s/ Jeffrey H. Jacobson  
Jeffrey H. Jacobson  
Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I certify that on this date, I emailed the attached document to all parties of record in the Court's ECF System.

/s/ Jason D. Lamm  
Jason D. Lamm  
Attorney for Defendant Brown